

## **TENTATIVE RULINGS for CIVIL LAW and MOTION**

### **April 1, 2009**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. If no hearing is requested, the tentative ruling is effective immediately. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

#### **TENTATIVE RULING**

**Case:** **Mast v. Archer Trucking Company, et al.**  
**Case No. CV PO 06-401**

**Hearing Date:** **April 1, 2009** **Department Fifteen** **9:00 a.m.**

Defendant Reliance Trailer Manufacturing's motion for summary judgment is **DENIED**. (Code Civ. Proc., § 437c.)

Defendant's motion for summary adjudication of the first cause of action for negligence is **GRANTED**. Plaintiff did not state facts sufficient to state a cause of action for negligence against defendant Reliance Trailer Manufacturing. (First Amended Complaint, ¶¶ 1-17.) Plaintiff has not presented evidence in opposition to this motion that would support a cause of action for negligence against defendant Reliance Trailer Manufacturing.

Defendant's motion for summary adjudication of the second, fourth, and fifth causes of action is **DENIED**. Reliance has not shown that plaintiff is part of a class of sophisticated users. (*Johnson v. American Standard* (2008) 43 Cal.App.4<sup>th</sup> 56; plaintiffs' undisputed material facts nos. 100, 104, 105, 109, 114-119, 121-129, 135-144; Granite's Material Facts nos. 3, 5, 6, 7, 9, 10, 11, 15, 37-39, 42, 45; Archer Trucking Company's Material Facts nos 1-13.)

Defendant's motion for summary adjudication of the third cause of action is **DENIED**. Three methods may be utilized in order to demonstrate a design defect: (1) the consumer expectations test shows that the product failed to perform as safely as an ordinary consumer would expect when it is used in an intended or reasonably foreseeable manner; (2) the risk-benefit test balances the risk of danger inherent in the challenged design versus the feasibility of a safer design, the gravity of the danger, and the adverse consequences to the product of a safer design; and (3) the failure-to-warn test imposes upon the manufacturer or retailer liability for the failure to warn of known or knowable dangers of the product. (*Arnold v. Dow Chemical Company* (2001) 91 Cal.App.4<sup>th</sup> 698, 715-717.) Plaintiffs, and defendants Archer Trucking Company and Granite Construction Company presented evidence that establishes that a triable issue of fact exists concerning causation and whether a layman such as plaintiff, would reasonably expect that the trailer would tip off the chassis when unlocked, whether a lay person could determine if

the tub was locked to the chassis just by looking at the trailer, and whether the lay person would expect to see warning labels as part of the design of the trailer under the consumer expectation test. (*Barker v. Lull Engineering Co.* (1978) 20 Cal.3d 413, 429 plaintiffs' Material Facts nos.100, 104, 105, 109, 114-119, 121-129, 135-144; Granite's Material Facts nos. 3, 5, 6, 7, 9, 10, 11, 15, 37-39, 42, 45; Archer Trucking Material Facts nos. 1-13.)

Defendant Reliance Trailer Manufacturing's objections to Archer Trucking Company's and Gary Griswold's evidence in opposition to its motion are **OVERRULED**.

Defendant Reliance Trailer Manufacturing's objections to plaintiffs evidence in opposition to its motion are: **OVERRULED** as to the Declaration of Jordan Mast, numbers 1-10; **OVERRULED** as to the Declaration of Jeremiah Merritt's numbers 1-4; and **SUSTAINED** as to the Declaration of Paul Herbert, numbers 1-2; **SUSTAINED** as to the Declaration of C. Brooks Cutter, numbers 1, 2, and 10, all other objections are **OVERRULED**.

Archer Trucking Company's and Gary Griswold's objections to Reliance Trailer Manufacturing's evidence are **OVERRULED**.

If no hearing is requested, defendant is directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437, subdivision (g) and California Rules of Court, rule 3.1312.

#### **TENTATIVE RULING**

**Case:** **Soria v. Tong**

**Case No. CV PM 08-1182**

**Hearing Date:** **April 1, 2009** **Department Fifteen** **9:00 a.m.**

The unopposed motion for order to transfer action for coordination is **DENIED WITHOUT PREJUDICE**. There is no proof of service showing service of a copy of the motion on the Alameda Superior Court. (Code Civ. Proc., § 403.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

#### **TENTATIVE RULING**

**Case:** **Sternes v. Aspen Pest Management, et al.**

**Case No. CV PO 08-3001**

**Hearing Date:** **April 1, 2009** **Department Fifteen** **9:00 a.m.**

This matter is **TAKEN OFF CALENDAR**. Plaintiff filed an amended complaint on March 16, 2009. (Code Civ. Proc., § 472.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

**TENTATIVE RULING**

**Case: Wheeler v. Morrison Homes, Inc.**

**Case No. CV CV 08-49**

**Hearing Date: April 1, 2009 Department Fifteen 9:00 a.m.**

This matter is **CONTINUED** on the Court's own motion to Wednesday, April 8, 2009, at 9:00 a.m. in Department Fifteen.

**TENTATIVE RULING**

**Case:** **Zasa v. Sutter Davis Hospital, et al.**

**Case No. CV PO 08-106**

**Hearing Date:** **April 1, 2009** **Department Fifteen** **9:00 a.m.**

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The default prove-up hearing is **CONTINUED** on the Court's own motion to Thursday, April 23, 2009, at 9:00 a.m. in Department Fifteen so that the Court may first decide Brandon Donlin's motion to set aside entry of default.

Plaintiff is directed to serve a copy of this ruling, the entry of default, and the Notice of Intention to Introduce Documentary Evidence and One Witness at Default Hearing by mail on Mr. Donlin at 1860 Lucille Lane, Pleasant Hill, California 94523.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.